THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.10543 & 11457 of 2007

DATED: 21-06-2007

W.P.No.10543 of 2007

Pendli Koteswara Rao & 5 others.

...PETITIONERS

AND

The Sub-Divisional Police Officer,
Guntur & 2 others.

...RESPONDENTS

W.P.NO.11457 OF 2007:

Gunjupalli Anjaneyulu.

... PETITIONER

AND

The Sub-Divisional Police Officer,
Guntur & 2 others.

... RESPONDENTS

COMMON ORDER:

Heard learned counsel appearing for the petitioners as well as the learned G.P. for Home appearing for the respondents.

2. These two Writ Petitions have been filed questioning the similar order, dated 08-05-2007, passed by the 3rd respondent-Sub-Divisional Magistrate &Revenue Divisional Officer, Guntur. W.P.No.10543 of 2007 has been filed by lessees of the five lodges namely M/s Srilekha, M/s New Raviteja; M/s Nandini; M/s Friends; M/s Everest; & M/s Vijetha situated in Guntur. W.P.No.11457 of 2007 has been filed by the lessee of M/s Srinivasa Lodge, Guntur. As the questions involved in both the writ petitions are similar they are being disposed of by a common order.

3. It is the case of the petitioners that the lessees of the said lodges are running the lodges by obtaining necessary licence from the concerned authorities, and the lodges are located in commercial areas, but however, on a report submitted by the 1st respondent-Sub-Divisional Police Officer, Guntur, the 3rd respondent-Sub-Divisional Magistrate & Revenue Divisional Officer, Guntur issued notices under Section 133 Cr.P.C. and Section 18(1) of the Immoral Traffic (Prevention) Act, 1956 (for brevity, 'the Act') alleging that it came to the notice of the 3rd respondent as reported by the 1st respondent about the activities

like immoral traffic of women and prostitution being carried on in the said lodges and accordingly the petitioners are directed to desist from allowing any such activities taking place in their lodges and they are also directed to appear before the 3rd respondent in respect of the notice issued under Section 18(1) of the Act. It is stated that the said lodges of the petitioners are being used for the purpose of organizing prostitution with the knowledge of the petitioners and Criminal Cases have been initiated repeatedly against them and numerous raids have been laid against the persons indulging in prostitution and therefore, petitioners are directed to submit an explanation within seven days as to why action should not be initiated under Sections 7(2) and 18(1) of the Act. Both the notices have been served on
07-03-2007 pursuant to which they have submitted an explanation on 09-03-2007. The 3rd respondent passed an order, dated 08-05-2007, under Section 18 of the Act for closure of their lodges for a period of six months within seven days from the date of receipt of the order, dated 08-05-2007, to prevent the prostitution and in the interest of public. Questioning the said order, these Writ Petitions have been filed.

4. Counters have been filed by the respondents 1 and 3. In the counter filed by the 1st respondent-Sub-Divisional Police Officer, Guntur, it is stated that the petitioners are running the said lodges by committing illegal activities like organizing prostitution with the active collusion of the Managers and owners of the lodges, involved in organized prostitution and therefore, cases have been

booked against them, and accordingly, the 1st respondent sent a report, dated
11-02-2007, to the Sub-Divisional Magistrate, Guntur for taking appropriate action. It is further stated that the said lodges are situated surrounding good number of hospitals, and Educational institutions, and the illegal activities are going on and the patients and students moving in the said area are facing many difficulties. The 1st respondent has submitted a report to the 3rd respondent-Sub-Divisional Magistrate, Guntur for taking necessary steps for cancellation of the licence of the lodges under section 18(3) of the Act.

5. A perusal of the report enclosed along with the Counter, dated 11-02-2007, sent to the 3rd respondent discloses that insofar as the petitioners in W.P.No.10543 of 2007 are concerned, as against the 1st petitioner though five cases were filed three cases ended in acquittal and two cases are still pending trial; against the 2nd petitioner, three cases are pending trial and two cases are acquitted; against the 3rd petitioner two cases are pending trial and two cases ended in acquittal; against the 4th petitioner three cases are pending trial and three cases ended in acquittal; against the 5th petitioner two cases are pending trial and three cases are acquitted; and against the 6th petitioner three cases are pending trial and one case is acquitted. Insofar as the petitioner in W.P.No.11457 of 2007 is concerned, two cases were filed under Section 4 of the Act and the same ended in acquittal.

6. It is stated in the counter filed by the 3rd respondent that pursuant to the report submitted by the 1st respondent, dated 11-02-2007, requesting to take appropriate action under Section 18(3) of the Act, in view of the fact, as is evident from the said report, that several cases are pending against the petitioners, conditional order, dated 02-03-2007, under Section 133 Cr.P.C. has been issued which was served on them on 07-03-2007 calling upon their explanations and also to appear in person on 09-03-2007. Apart from that separate notices have been issued under
Section 18(1) of the Act stating that the report of the Sub-Divisional Police Officer, Guntur discloses that the petitioners' lodges are being used for the purpose of organized prostitution and therefore, criminal cases have been initiated against them repeatedly by making numerous raids and accordingly show cause notices have been issued as to why action should not be initiated under Sections 7(2) and 18(1) of the Act. It is stated that the explanations filed by the petitioners are under Section 18(1) of the Act only but not under Section 133 Cr.P.C. and therefore, final orders have been passed stating that no explanations have been filed within the stipulated time and the 3rd respondent satisfied with the remarks of the 1st respondent and with the powers vested under Section 18(1) of the Act passed the said impugned order ordering eviction i.e., closure of their lodges for a period of six months.

7. Learned counsel appearing for the petitioners submits that it cannot be stated that the explanations submitted on

09-03-2007 are not with reference to the notices under Section 18(1) of the Act and therefore passing the final orders ordering closure of the lodges for a period of six months is illegal and against the principles of natural justice.

8. It is stated that several cases have been registered against the petitioners' lodges under Section 4 of the Act as the prostitution in or in the vicinity of the public places is an offence under Section 7 of the Act.

9. Under Section 7(2) of the Act any person being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or being the tenant, lessee, occupier, or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution is liable to punishment.

10. In the counter it is stated that in view of the fact that several cases under the Act have been registered and pending trial, the impugned orders have been passed in the interest of the public ordering eviction and closure of the said lodges for a period of six months.

11. A perusal of Section 18(1) of the act goes to show that it is open for the Sub-Divisional Magistrate, Guntur on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of
200 mts of any private place referred to in sub-section 1 of Section 7, is being run or used as a brothel by any person, or is being

used by prostitutes for carrying on their trade, after issuing a notice on such owner, lessor, landlord of such place asking them to submit explanation within seven days as to why the order shall not be passed, direct their eviction.

12. Learned counsel appearing for the petitioners submits that the explanations submitted on 09-03-2007 were not at all considered and therefore impugned order is unsustainable under Section 18(1) of the Act. It is stated that under Section 18(1) of the Act the concerned Magistrate is also under legal obligation to hear the person concerned and after hearing only if the Magistrate satisfies that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders.

13. A perusal of the explanation goes to show that the petitioners were also asked to appear but they are making their representation through the said explanation only. Therefore, I am of the opinion that it cannot be said that the said explanations submitted on 09-03-2007 are not the explanations to the show cause notices issued under Section 18(1) of the Act, dated 02-03-2007, served on 07-03-2007. Therefore the non consideration of the explanations, dated 09-03-2007, is illegal and unsustainable under Section 18(1) of the Act. It may not be just and proper for this Court to express any opinion with regard to whether any legal defence has been taken or not in their explanations.

14. Learned counsel appearing for the respondents submits that though there is no specific denial with regard to the pendency of

the criminal cases against them, and it is stated that several cases have been registered and some of the cases have been acquitted and some are pending. Therefore, I am not inclined to express any opinion with regard to the defence of the petitioners submitted in their explanations pursuant to the show cause notices, but however, I am of the opinion that the 3rd respondent-Sub-Divisional Magistrate, Guntur ought to have considered the explanations submitted on 09-03-2007 pursuant to the notices issued by them on
07-03-2007.

15. Learned counsel appearing for the petitioner contended that personal hearing may be offered to them before passing final orders, but however, I am not inclined to entertain the same. It is for the Sub-Divisional Magistrate to consider the explanations alone and there is no obligation to give another opportunity calling upon them for personal hearing.

16. In view of the aforesaid facts and circumstances as the explanations have not been considered the Writ Petitions are allowed setting aside the impugned order of the 3rd respondent-Revenue Divisional Officer & Sub-Divisional Magistrate, Guntur, dated 08-05-2007, directing him to consider the explanations of the petitioners, dated
09-03-2007, and pass appropriate orders within ten days from the date of receipt of a copy of this order. It is made clear that the orders made under Section 133 Cr.P.C. have not at all been interfered with and they hold good wherein the petitioners were

ordered to desist the activities taking place like immoral trafficking of the women and prostitution in their lodges. No order as to costs.

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V. ESWARAIAH, J

21st June, 2007.

Note:

Furnish C.C. of the order within two days.

B/o

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